

# TEACH ACT BASICS

Signed into law on November 2, 2002, the Teach Act amends § 110(2) of the Copyright Act.

In late 2002 Congress passed the TEACH Act which provides expanded benefits for those involved in distance education. Faculty and administrators should remember that the fair use doctrine will remain important in distance education. The new Section 110(2) gives specific authorization that may not be sufficient in many cases. Fair use also remains important because the activities the TEACH Act authorizes may not include everything that a teacher wishes to include in a course. It only covers in class performances and displays. For example, electronic reserves will continue to be governed by fair use.

## **Benefits of the TEACH Act**

1. The primary benefit of the TEACH Act for educators is its repeal of the earlier version of Section 110(2). This repealed law permitted educators to "perform" only certain types of works and generally allowed transmissions to be received only in classrooms.
  - The new version of Section 110(2) offers an expanded range of allowed works. The new law permits the display and performance of nearly all types of works.
  - Section 110(2)'s expanded "performance rights" include the following:
    - Transmitting performances of all of a non-dramatic literary or musical work. Non-dramatic literary works as defined in the Act exclude audiovisual works; thus, examples of permitted performances in this category in which entire works may be displayed and performed might include a novel, poetry or short story reading.
    - Transmitting reasonable and limited portions of any other performance. This category includes all audiovisual works such as films and videos of all types, and any dramatic musical works such as operas and musicals.
    - Transmitting displays of any work in amounts comparable to typical face-to-face displays.
    - This category would include still images of all kinds.
2. Expansion of receiving locations. The former law limited the transmission of content to classrooms and other similar location. Educational institutions may now reach students through distance education at any location.
3. Storage of transmitted content. The new law explicitly allows retention of the content of a course and student access for a brief period of time, and it permits copying and storage that is incidental or necessary to the technical aspects of digital transmission systems.
4. Digitizing of analog works. In order to facilitate digital transmissions, the law permits digitization of some analog works, but only if the work is not already available in digital form.

## **Requirements of the TEACH Act**

### Institutional and Policy Requirements

1. Accredited nonprofit institution. The benefits of the TEACH Act apply only to a "government body or an accredited nonprofit educational institution." (110 definitions.)

2. Copyright policy. The educational institution must "institute policies regarding copyright," The new law suggests that these policies would specify the standards educators and others will follow when incorporating copyrighted works into distance education. 110(2)(D)(i)
3. Copyright information. The institution must "provide informational materials" regarding copyright; the language must specify that the materials must "accurately describe, and promote compliance with, the laws of United States relating to copyright." These materials must be provided to "faculty, students, and relevant staff members." 110(2)(D)(i)
4. Notice to students. The new law specifies that the institution must provide "notice to students that materials used in connection with the course may be subject to copyright protection." The notice could be included on course materials or at the beginning of a digital distance-education course. 110(2)(D)(i)
5. Enrolled students. The transmission of content must be made "solely for. . . students officially enrolled in the course for which the transmission is made." 110(2)C(i)

### **Information Technology Requirements**

1. Limit access to enrolled students. The new law calls upon the institution to limit the transmission to students enrolled in the particular course "to the extent technologically feasible." 110(2)C(I)
2. Technological controls on storage and dissemination. While the transmission of distance education content may be conducted by diverse technological means, an institution deploying "digital transmissions" must apply technical measures to prevent "retention of the work in accessible form by recipients of the transmission. . . for longer than the class session." While undefined as to what "class session" means the new law suggests that this is a finite amount of time, and students would be unable to access it after a designated time. For "digital transmissions," the institution must apply "technological measures" to prevent recipients of the content from engaging in "unauthorized further dissemination of the work in accessible form." 110(2)(D)(ii)(aa)
3. Interference with technological measures. Where "digital transmissions" are involved, including restrictive codes or other "management systems" to regulate storage or dissemination of the works, the institution may not "engage in conduct that could reasonably be expected to interfere with technological measures." 110(2)(D)(ii)
4. Limited temporary retention of copies. The statute explicitly allows for "transient or temporary storage of material." On the other hand, the statute does not allow anyone to maintain the copyrighted content "on the system or network" for availability to the students "for a longer period than is reasonably necessary to facilitate the transmissions for which it was made." 110 definitions
5. Limited long-term retention of copies. The TEACH Act also amended Section 112 of the Copyright Act, addressing the issue of so-called "ephemeral recordings." The new Section 112(f)(1) explicitly allows educational institutions to retain copies of their digital transmissions that include copyrighted materials pursuant to Section 110(2), provided that no further copies are made from those works, except as allowed under Section 110(2), and such copies are used "solely" for transmissions pursuant to Section 110(2). The institution may, however, retrieve that content for future uses consistent with the new law. 112(f)(1)

### **Requirements for Instructors**

1. Works explicitly excluded. A few categories of works are specifically left outside the range of permitted materials under the TEACH Act. The following materials may not be used:
  - o Works that are marketed "primarily for performance or display as part of mediated instructional activities transmitted via digital networks"; and
  - o Performances or displays given by means of copies "not lawfully made and acquired" under the U.S. Copyright Act, if the educational institution "knew or had reason to believe" that they were not lawfully made and acquired. 110(2)

2. Instructor oversight. The statute mandates the instructor's participation in the planning, conduct and educational experience of the distance education program. An instructor must make sure that:
  - The performance or display “is made by, at the direction of, or under the actual supervision of an instructor” 110(2)(A);
  - The materials are transmitted “as an integral part of a class session offered as a regular part of the systematic, mediated instructional activities” of the educational institution 110(2)(A); and
  - The copyrighted materials are "directly related and of material assistance to the teaching content of the transmission." 110(2)(B)
3. Mediated instructional activities. The statute requires that performances and displays, involving a “digital transmission,” must be in the context of “mediated instructional activities.” The use of material must be “an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting.” Also, “mediated instructional activities” do not encompass uses of textbooks and other materials “which are typically purchased or acquired by the students.” 110 definitions
4. Converting analog materials to digital formats. The TEACH Act includes a prohibition against the conversion of materials from analog into digital formats, except under the following circumstances:
  - The amount that may be converted is limited to the amount of appropriate works that may be performed or displayed, pursuant to the revised Section 110(2); and
  - A digital version of the work is not "available to the institution," or a digital version is available, but it is secured behind technological protection measures that prevent its availability to the Institution for performing or displaying in the distance-education program consistent with Section 110(2), 112(f)

**To learn more about the Teach Act, click [here](#)**